THE STATE AND THE CHILD[1]

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ONE hopeful method of preventing men from becoming criminals is the method of the juvenile court. We are trying to save the child, so as to prevent the growth of adult crime. I shall discuss briefly the meaning of the juvenile court,—the place in jurisprudence of this new legislation.

The conception of the ultimate right of the state to control the custody of the child is nothing new, although it is often thought that this right can be exercised in a court of chancery only if the child has property and as an incident to the control of such property. The courts of England and America have, however, in most emphatic language declared this view to be erroneous, and have clearly laid down the principle upon which juvenile-court legislation is primarily based, namely, that the state is the ultimate guardian of the child, and that when the parent, the first and natural guardian, is either unable or unwilling to do his duty toward the child, to raise it so that it shall become a decent citizen of the state, the state has the right to intervene, to protect itself against the rearing of a criminal, and to protect the child against the danger of its being led into the ways of criminality.

Now, this duty and right of the state in its relation to the child was first enforced in the case of the dependent child. If friends or the church failed to take charge of the orphan, the state took it in hand, in an endeavor to raise it properly. What the state did in dealing with its dependents is what it is endeavoring to do in most states through juvenile-court legislation, not only to the child who is merely dependent or neglected but to the one who is delinquent, who needs the state's care because its parents have allowed it to travel along the path

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which will lead to criminality and have been unable or unwilling to prevent it from committing wrongs.

Here in Manhattan, however, as in England, you are dealing with the wayward child, not under the ultimate parental power of the state, but under its power to prohibit and punish crimes. The act of May 1909 says that a child is not to be accused of specific crimes, but of juvenile delinquency. Juvenile delinquency is, however, only another statutory name for the crimes and misdemeanors which if committed by adults are designated by various names. It is the crime of juvenile delinquency for which the child is, in greater New York, brought into your juvenile court. It comes there as a criminal charged with a crime, and under the criminal law, the main consideration is whether it has committed this crime of delinquency or not.

That is not the way that the western states, followed now by some of the western counties of New York, are dealing with the problem. The child is not charged with a crime. The forms of criminal-law procedure are not adopted, and the judgment is not one of guilty or not guilty of a crime. In solving the problem of the treatment and care of the child, the judge does not sentence it either to probation or to an institution for a definite time. He endeavors to find out whether the child, who is stated in a petition to be a delinquent in that it has done certain wrongs or has been incorrigible, is for its safety and proper development in need of the supervision of the state, and whether the state for its protection ought to undertake the supervision of the child. The court of chancery, representing the ultimate parental power of the state as *parens patriae*, undertakes the supervision if this is found necessary. The state intervenes for the good of the state and for the good of the child. The child is taken in hand by the state for an indeterminate period. This may in some cases extend until it reaches the age of majority. It may be for a very much shorter period. No attempt is made at the time the child comes before the court to determine how long the supervision shall last, because it is humanly impossible to know at that time how long that child is going to need the care of the state.

In the administration of the juvenile-court law,—and this

marks the real distinctive addition to our jurisprudence through this legislation—the child who has done something against the laws of the state is no longer treated as a criminal. The state no longer stigmatizes the child first and then attempts to save it, but takes it in hand as a wise parent deals with his child. Such a parent does not stigmatize his child by marking it with the brand of criminality that will remain throughout life; he attempts to shield it, not without correction, not without care, but with correcting care.

While under such legislation the child is not deemed a criminal, nevertheless the law recognizes the fact that some children under seventeen or eighteen are criminals in whatever sense you may define the word criminal; and the power is therefore given to the judge of the juvenile court to determine, as to any child, whether or not it shall be dealt with in the juvenile court or turned over to the criminal court. It sometimes but very rarely happens that a child at sixteen has become a habitual criminal, and it must be dealt with as such.

Juvenile-court legislation emphasizes the importance of the family and the home as the foundation of our civilization, and lays stress on the duty of the state to keep them intact. It is therefore the aim of the court in dealing with the child that has gone wrong, to give it a chance, if possible, to remain at home. Probation at home is the first remedy attempted. While the probation officer represents the power of the state, he represents, more than that, the genuine interest of the state in the child, and in the family of which that child forms a part.

Every endeavor is made through the probation officer to keep the child in the home, to restore harmonious relations between the child, the family and society. To accomplish this, the child must not be placed on probation for two or three months and then left alone. That is no probation at all.

In order to afford probation that shall be something real in the life of the child, there must be properly trained and selected probation officers. In the beginning of this legislation in the west, the laws made no provision for probation officers. That was left to private initiative, and in Chicago for example private philanthropy supplied twenty or more probation officers, one

for each district in the city. In time, however, the state made provision for public probation officers, selected through civil-service examinations—the only method at all feasible as long as political machines attempt to control even such officers. Beside thirty policemen assigned to this work, the Chicago juvenile court has thirty to thirty-five probation officers, a chief and assistant chief, all chosen under civil-service examinations.

I read in this morning's paper that you are to have in New York a dozen probation officers. You need at least five or ten times a dozen to do the work properly; because if probation is to be the alternative to the taking of the child away from its home, it must be something real in the life of the child; it cannot be perfunctory; and to make it real, the probation officer must not be overburdened. No man or woman can really know a child and its family, can be a real friend to that child, can take the place of the supervision in the reformatory, if he has two hundred or more children to take care of, as will certainly be the case in New York with only a dozen probation officers.

Something in addition to the public probation officer is needed, even if you have five dozen of them. The public official representing the power of the state, the trained expert doing expert work, is essential; but the interest, the sympathy and the active work of public-spirited citizens is also essential if the state as an organized body, and the people of the state as members of that organized body, want to save themselves and their children from a new generation of criminals. The big-brother and the big-sister movement must be supported and augmented.

If for every child that comes into the juvenile court you find, in addition and subordinated to the expert body of probation officers, one man or one woman who knows what life means, who has made a success of life in the real sense of the word, and not in the money sense, who feels the spirit of that phrase that passes our lips so lightly, but is realized so little in the lives of most of us, the spirit of human brotherhood,—if you will get one such man or woman for each child that comes into court, to be to him a real big brother or sister, the problem of juvenile delinquency will be well on the way to solution.

There are many good women in our cities who think it a great

thing to bring the children into the juvenile court so that they may come into contact with the all-wise man, the judge of the juvenile court. That is a mistake. It is infinitely better to keep the child out of any court. It is infinitely better to prevent the child from going wrong than to attempt to save it in the juvenile court after it has gone wrong.

The real work of the world is, however, not the mere preventive work, but the constructively preventive work. It will not do simply to eradicate the evils that surround the children in all large cities. They must be supplanted by the positive good. It will not do to wipe out the dance halls connected with the saloons that lead so many of our girls to their ruin. Wiping out is only a half measure, and a totally ineffective one, because the demand of the child for recreation, for pleasure and for happiness is the most fundamental cry of childhood. The young people are entitled to have it answered; they have a right to the opportunity for satisfying it in decent surroundings, and it is not socialism to say that the state is in duty bound to supply this need.

It will not do merely to enact compulsory-education laws, to send the children to school, and to endeavor to make them learn. They are entitled to be taught in the right way, and to be taught right things; they are entitled to be guarded while they are being taught; and they are entitled to have the state, which says they must go to school, see to it that they are in fit mental and physical condition to go to school.

It may sound sensational to say that adenoids lead to the penitentiary, but they do. Take a youngster from a neglected home, or from an uninformed home, and suffering from adenoid growths. The schoolroom of course is overcrowded. We have not yet reached the ideal of limited numbers in public schoolrooms; the teacher has more than she can attend to, and cannot give individual care to the child. The boy, nervous because of his defective breathing power, cannot do the ordinary tasks that are set for the children; naturally he gets out of harmony with his surroundings and begins to "bum" from school. There is not much fun in bumming alone, so he draws two or three others away with him. Mere bumming is not sufficient; it is

more fun to break open a sealed car and to take things than to pick up things on the track, which might naturally be considered derelict property. The boy comes into contact with the police, and if, as has been possible only during the last ten or twelve years, he gets into the juvenile court, there is a chance that his physical defect may be observed and corrected. But if there be no juvenile court, and the boy gets into the police court, is found guilty of larceny and sentenced to a short term in jail, during which he mingles with adult criminals, the state is starting him on a path that too often leads to the commission of more desperate acts and ultimately lands him in the penitentiary, —and all through a failure to demand a correction of physical ailments in his youth.

If the state is going to enforce compulsory education, it must know whether the child is fit to go to school. It must have a physician in school to examine it, and a nurse or other official in school to follow it up and see that its parents do their duty.

I do not say that the state can or should take the place of the parents; it should force them to do their duty; if they are unable, then the state must aid; if they are unwilling, then the state should compel them, under penalty of removing the child and of punishing the parents for contributing toward its dependency or delinquency.

Throughout the civilized world, juvenile courts modeled on American precedents are being established, and the duty of the state towards its children is being more and more understood and performed. During the discussion of the Children's Bill in the House of Commons two years ago, one member well expressed the best thought of the age in these words:

> We want to say to the child if the world or the world's law has not been its friend in the past, it shall be now. We say that it is the duty of this Parliament, and this Parliament is determined to lift, if possible, and rescue it, to shut the prison door and to open the door of hope.